Continental Web Press, Inc. *and* Chicago Local 245, Graphic Arts International Union, AFL-CIO. Case 13-CA-22713

May 17, 1983

DECISION AND ORDER

BY MEMBERS JENKINS, ZIMMERMAN, AND HUNTER

Upon a charge filed on November 10, 1982, by Chicago Local 245, Graphic Arts International Union, AFL-CIO, herein called the Union, and duly served on Continental Web Press, Inc., herein called Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 13, issued a complaint on November 29, 1982, and an amendment to the complaint on December 6, 1982, against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge and complaint and notice of hearing before an administrative law judge were duly served on the parties to this proceeding.

With respect to the unfair labor practices, the complaint alleges in substance that on September 10, 1982, following a Board election in Case 13-RC-15401, the Union was duly certified as the exclusive collective-bargaining representative of Respondent's employees in the unit found appropriate;[1] and that, commencing on or about November 4, 1982, and at all times thereafter, Respondent has refused, and continues to date to refuse, to bargain collectively with the Union as the exclusive bargaining representative, although the Union has requested and is requesting it to do so. On December 8, 1982, Respondent filed its answer to the complaint admitting in part, and denying in part, the allegations in the complaint. Respondent filed an amendment to its answer on December 15, 1982.

On December 29, 1982, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment. Subsequently, on January 5, 1982, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Respondent thereafter filed a response to the Notice To Show Cause.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

In its answer to the complaint and its response to the Notice To Show Cause, Respondent contests the validity of the Union's certification. Respondent admits its refusal to bargain, but denies that it thereby violated Section 8(a)(5) and (1) of the Act. Specifically, Respondent contends that the Board's unit determination was erroneous in that it represents a departure from Board policy and precedent without sufficient reason and is not supported by the record. Respondent also contends that the Board abused its discretion by ordering in its Decision on Review that the impounded ballots be counted, rather than directing a new election. In support of its contention that a new election should be conducted, Respondent asserts that the unit of pressroom employees doubled in size prior to the Union's certification. It also presents previously unavailable evidence of (1) a November 16, 1982, letter allegedly signed by 65 of the 72 pressroom employees requesting "all parties involved to agree to the holding of a new election," and (2) an undated petition allegedly signed by 59 pressroom employees stating they "do not wish to be represented by [the Union.]"

In his Motion for Summary Judgment, the General Counsel argues that there are no issues requiring a hearing, that Respondent is attempting to relitigate issues which were raised and determined by the Board in the underlying representation case, and that Respondent's arguments regarding the direction of a new election do not relieve Respondent of its obligation to bargain or raise any material issue as to the Union's continued majority status.[2] We agree with the General Counsel.

[1] Official notice is taken of the record in the representation proceeding, Case 13-RC-15401, as the term "record" is defined in Secs. 102.68 and 102.69(g) of the Board's Rules and Regulations, Series 8, as amended. See *LTV Electrosystems*, 166 NLRB 938 (1967), enfd. 388 F.2d 683 (4th Cir. 1968); *Golden Age Beverage Co.*, 167 NLRB 151 (1967), enfd. 415 F.2d 26 (5th Cir. 1969); *Intertype Co. v. Penello*, 269 F.Supp. 573 (D.C.Va. 1967); *Follett Corp.*, 164 NLRB 378 (1967), enfd. 397 F.2d 91 (7th Cir. 1968); Sec. 9(d) of the NLRA, as amended.

Member Hunter notes that he did not participate in the underlying representation proceeding. However, for institutional reasons he joins in granting the instant motion.

[2] In his Motion for Summary Judgment, the General Counsel moved that the November 16, 1982, employee letter submitted by Respondent be stricken for lack of authentication. Respondent, in its response to the Notice To Show Cause, offered affidavits of 64 of the 65 signers of the letter in support of the document's authenticity. On February 7, 1983, the General Counsel filed a motion to strike the undated employee petition and related affirmative defense as irrelevant and immaterial. On February 17, 1983, Respondent filed a response to the motion to strike. Since we find, *infra*, that the evidence proffered by Respondent does not warrant the holding of a new election, we find it unnecessary to pass on the General Counsel's motion to strike.

Review of the record herein, including the record in Case 13-RC-15401, shows that on April 24, 1980, the Regional Director issued a Decision and Direction of Election wherein, contrary to Respondent's contention that only an operational unit was appropriate, he found appropriate the petitioned-for unit of all pressroom employees at Respondent's Itasca, Illinois, facility. On May 5, 1980, Respondent filed a request for review of the Regional Director's decision. On May 28, 1980, the Board telegraphically granted the request for review and directed the Regional Director to impound the ballots until such time as it ruled on the request for review. On May 29, 1980, an election was conducted and on June 4, 1980, the Union filed timely objections to conduct affecting the results of the election.

On July 28, 1982, the Board issued its Decision on Review and Direction, in which it found the petitioned-for unit of pressroom department employees appropriate and directed that the impounded ballots be opened and counted.[3] On August 6, 1982, the Regional Director issued a tally of ballots showing 19 votes for, and 11 against, the Union. There were four challenged ballots, a number insufficient to affect the results of the election. On August 9, 1982, the Union withdrew its objections to the election. On August 12, 1982, Respondent filed objections to the conduct of the election and a request for reconsideration. On September 10, 1982, the Acting Regional Director issued a Supplemental Decision and Certification of Representative. The Board issued an order denying Respondent's request for reconsideration on September 21, 1982. On September 22, 1982, Respondent filed a request for review of the Acting Regional Director's Supplemental Decision and Certification of Representative and exceptions to said Decision and to the Board's failure to reconsider its Decision on Review and Direction. On October 12, 1982, the Board denied Respondent's request for review of the Acting Regional Director's Supplemental Decision and Certification of Representative.

It is well settled that in the absence of newly discovered or previously unavailable evidence or special circumstances a respondent in a proceeding alleging a violation of Section 8(a)(5) is not entitled to relitigate issues which were or could have been litigated in a prior representation proceeding.[4]

The issues raised by Respondent in this proceeding concerning the Board's unit determination and its order to count the impounded ballots were litigated in the prior representation proceeding. With respect to Respondent's proffered evidence concerning the pressroom employees' letter and petition, we find that such evidence does not warrant the holding of a new election nor does it establish any basis upon which it can lawfully refuse to bargain with the Union. We therefore find that Respondent has not raised any issue which is properly litigable in this unfair labor practice proceeding. Accordingly, we grant the Motion for Summary Judgment.

On the basis of the entire record, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

Respondent, an Illinois corporation with a facility in Itasca, Illinois, is engaged in the manufacture of printed products. During the past calendar year, a representative period, Respondent, in the course and conduct of its printing operations, sold and shipped from its Itasca, Illinois, facility products, goods, and materials valued in excess of $50,000 directly to points outside the State of Illinois.

We find, on the basis of the foregoing, that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATION INVOLVED

Chicago Local 245, Graphic Arts International Union, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. *The Representation Proceeding*

1. The unit

The following employees of Respondent constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

> All pressroom employees employed in the pressroom department of the Respondent at its facility presently located at 1450 Industrial Drive, Itasca, Illinois; but excluding office clerical employees, salesmen, professional employees, guards and supervisors as defined in the Act, and all other employees.

2. The certification

On May 28, 1980, a majority of the employees of Respondent in said unit, in a secret-ballot election

[3] 262 NLRB 1395.

[4] See *Pittsburgh Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941); Rules and Regulations of the Board, Secs. 102.67(f) and 102.69(c).

conducted under the supervision of the Regional Director for Region 13, designated the Union as their representative for the purpose of collective bargaining with Respondent.

The Union was certified as the collective-bargaining representative of the employees in said unit on September 10, 1982, and the Union continues to be such exclusive representative within the meaning of Section 9(a) of the Act.

B. *The Request To Bargain and Respondent's Refusal*

Commencing on or about October 4, 1982, and at all times thereafter, the Union has requested Respondent to bargain collectively with it as the exclusive collective-bargaining representative of all the employees in the above-described unit. Commencing on or about November 4, 1982, and continuing at all times thereafter to date, Respondent has refused, and continues to refuse, to recognize and bargain with the Union as the exclusive representative for collective bargaining of all employees in said unit.

Commencing on or about October 15, 1982, and at all times thereafter, the Union, by letter, has requested Respondent to furnish the Union with names, addresses, telephone numbers, classifications, dates of hire, shifts, wage rates, wage history for the past 3 years, shift schedules, recognized holidays, vacation policies, sick leave policies, copies of insurance policies, summary plan descriptions of pension and profit-sharing plans and a statement of amounts paid in, vested and/or accrued, work hours, overtime policies, and other conditions of employment of employees in the bargaining unit. This information is necessary for and relevant to the Union's performance of its function as the exclusive collective-bargaining representative of the unit employees. Since on or about November 4, 1982, Respondent has failed and refused to furnish the Union with the information described above.

Accordingly, we find that Respondent has, since November 4, 1982, and at all times thereafter, refused to bargain collectively with the Union as the exclusive representative of the employees in the appropriate unit and that, by such refusal, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Continental Web Press, Inc., set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that it cease and desist therefrom, and, upon request, bargain collectively with the Union as the exclusive representative of all employees in the appropriate unit, and, if an understanding is reached, embody such understanding in a signed agreement.

In order to ensure that the employees in the appropriate unit will be accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of certification as beginning on the date Respondent commences to bargain in good faith with the Union as the recognized bargaining representative in the appropriate unit. See *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817; *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

CONCLUSIONS OF LAW

1. Continental Web Press, Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Chicago Local 245, Graphic Arts International Union, AFL–CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. All pressroom employees employed in the pressroom department of the Respondent at its facility presently located at 1450 Industrial Drive, Itasca, Illinois; but excluding office clerical employees, salesmen, professional employees, guards and supervisors as defined in the Act, and all other employees, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. Since September 10, 1982, the above-named labor organization has been and now is the certified and exclusive representative of all employees in the aforesaid appropriate unit for the purpose of collective bargaining within the meaning of Section 9(a) of the Act.

5. By refusing on or about November 4, 1982, and at all times thereafter, to bargain collectively

with the above-named labor organization as the exclusive bargaining representative of all the employees of Respondent in the appropriate unit, and by refusing to furnish the Union with the information it requested in its letter of October 15, 1982, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

6. By the aforesaid refusal to bargain, Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing, employees in the exercise of the rights guaranteed them in Section 7 of the Act, and thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

7. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Continental Web Press, Inc., Itasca, Illinois, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with Chicago Local 245, Graphic Arts International Union, AFL–CIO, as the exclusive bargaining representative of its employees in the following appropriate unit:

> All pressroom employees employed in the pressroom department of the Respondent at its facility presently located at 1450 Industrial Drive, Itasca, Illinois; but excluding office clerical employees, salesmen, professional employees, guards and supervisors as defined in the Act, and all other employees.

(b) Refusing to supply the aforesaid labor organization with requested information which is necessary for collective bargaining.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain with the above-named labor organization as the exclusive representative of all employees in the aforesaid appropriate unit with respect to rates of pay, wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Upon request, supply the above-named labor organization with the information it requested which is necessary for collective bargaining.

(c) Post at 1450 Industrial Drive, Itasca, Illinois, copies of the attached notice marked "Appendix."[5] Copies of said notice, on forms provided by the Regional Director for Region 13, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director for Region 13, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

[5] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT refuse to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with Chicago Local 245, Graphic Arts International Union, AFL–CIO, as the exclusive representative of the employees in the bargaining unit described below.

WE WILL NOT refuse to supply the above-named Union with requested information which is necessary for collective bargaining.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, upon request, bargain with the above-named Union, as the exclusive representative of all employees in the bargaining unit described below, with respect to rates of pay, wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

> All pressroom employees employed in the pressroom department of the Employer at

its facility presently located at 1450 Industrial Drive, Itasca, Illinois; but excluding office clerical employees, salesmen, professional employees, guards and supervisors as defined in the Act, and all other employees.

WE WILL, upon request, supply the above-named Union with requested information which is necessary for collective-bargaining.

CONTINENTAL WEB PRESS, INC.